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San Jose Police Officers' Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

No.

**DECLARATION OF DEVLIN CREIGHTON IN
SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION**

I, Devlin Creighton, declare and say:

1. I am employed by the City of San Jose as a Police Officer and a member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have worked as a Police Officer for the City of San Jose since 2007. As a result of my employment with the City of San Jose, I am familiar with the facts in this matter, as well as those set forth in this Declaration. If called upon as a witness, I could and would testify competently to these facts.

1 2. I submit this declaration in support of the SJPOA's *Ex Parte* Application
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary
3 Injunction ("*Ex Parte* Application for TRO").

4 3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee
6 contributions for retirement benefits (including increases to employee-paid retirement and
7 retiree health care costs) that amount to an approximate additional 17% decrease to my
8 take-home pay.

9 4. I am informed that this voluntary pay cut, combined with increases to the
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's
11 police officers among the lowest paid police in the region taking into account total
12 compensation. We currently pay more into our retirement than any other police agency in
13 the region. This is in sharp contrast to 2007, when I was hired, when San Jose Police
14 Department was considered one of the best paid, and most sought after agencies in the
15 region. Effective June 24, 2012, we are slated for an additional approximate 2% decrease
16 to take home pay which will put us even farther behind other law enforcement agencies in
17 the region.

18 5. The cumulative impact of the pay reduction along with the increases to
19 employee-paid retirement/retiree health care costs has forced many officers to take
20 positions with other police agencies in the region. I know several officers who have
21 already left the department and many more who are considering leaving should additional
22 decreases to pay and/or pension benefits occur.

23 6. I am married.

24 7. The prior pay reduction and increases to employee-paid retirement/retiree
25 health care costs have forced me to cut back on most non-essential spending in order to
26 have enough money each month to pay my family's living expenses. In order to pay my
27 bills for necessities, including our mortgage, I have been unable to save any extra money
28 for emergencies and have had to reduce the amount my wife and I were saving for

1 retirement. Despite these cutbacks, we are struggling to stay current on our mortgage
2 payments.

3 8. Measure B, if implemented, would require that I and other San Jose
4 police officers begin paying 50% of the costs of retiree healthcare, including both the
5 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%
6 which means that my salary immediately will be decreased by at least another 9% for the
7 unfunded retiree health care costs (because we are already paying 7% of the unfunded
8 retiree health care costs) although I will receive the same level of benefits from the City.
9 If this occurs, it will be difficult, if not impossible, for my wife and I to continue paying
10 for even our basic living expenses.

11 9. I have also been informed that the City will start charging me for 50% of
12 the unfunded pension liability (also currently set at 32%) although the implementation of
13 the unfunded pension liability charges will be phased in over time. The implementation
14 of this additional decrease will make my financial situation even more precarious.

15 10. Measure B will also modify disability retirement for San Jose police
16 officers, as detailed below, such that it will no longer be of any benefit to me. I consider
17 comprehensive disability retirement protection an absolutely crucial employment benefit
18 for my line of work because police work is extremely physically demanding and
19 dangerous. Our job is to protect the community which necessarily means we have to put
20 ourselves at risk. I would not have chosen a career in law enforcement without the
21 knowledge that my family would be protected with full retirement benefits in the event
22 that I am disabled as a result of actions taken in the line of duty while performing my job
23 protecting the citizens of San Jose.

24 11. Under the City of San Jose's current disability retirement plan for police
25 officers, I would be deemed disabled if I am no longer able to perform duties within my
26 peace officer classification (i.e. the normal duties of a police officer). Under the current
27 system, if I was rendered disabled, I would be entitled to retirement disability payments of
28 50% of my current salary for the first 20 years of service and an additional 4% for every

1 year of service thereafter. The City explained these rights to me many times throughout
2 my career, starting in the Police Academy, and I have counted on these rights throughout
3 my career to protect my family's financial security should I be injured in the line of duty.

4 12. On March 28, 2011, I was working traffic enforcement on a City-issued
5 motorcycle as part of the San Jose Police Department Motors Unit, a specialized unit I had
6 been selected to apply for after four years on the job. I pulled out after a car as part of a
7 routine traffic stop and the next thing I remember is waking up in pool of my own blood
8 with a homeless man holding my hand and telling me it would be ok. Although I do not
9 remember what happened, I have been advised by the police report that a car, which fled
10 the scene in a felony hit and run, pulled out in front of me suddenly. I hit the car and was
11 thrown from my motorcycle. I was knocked unconscious for one to two minutes and had
12 to be transported to the hospital in an ambulance. At the hospital I was initially diagnosed
13 with a broken neck (the 5th and 6th vertebrae) and was told that the protrusion of the bone
14 from those broken vertebrae was pressing against my spinal column. Because of the risk
15 of those bone protrusions severing my spinal column, I had emergency surgery the next
16 day. The doctors did a bone graft on the broken vertebrae and fused them together with a
17 titanium plate.

18 13. The accident also caused two compression fractures in my thoracic
19 vertebrae, five chipped and/or broken teeth, a soft tissue injury to my lower back, and a
20 fractured right wrist that was not discovered until 6 months after the accident. I also
21 developed a ganglion cyst in my left wrist as a result of the accident. Because of the
22 delay in diagnosing my fractured wrist, it did not heal correctly and is significantly
23 weaker than it used to be. The cyst in my left wrist has also decreased the strength in that
24 wrist although it is stronger than my right wrist.

25 14. The accident has left me with the following doctor-ordered medical
26 restrictions: I cannot wear headgear of any kind (i.e. helmet, riot gear, etc); I cannot lift
27 my arms above my shoulders; I cannot pull, lift, or push anything over twenty pounds;
28 and I am supposed to limit the amount of time I spend sitting or bending. As a result, I am

1 on modified duty pending the approval of my disability retirement application. I have
2 already had my appointment with the City doctor to determine if he agreed with my
3 doctor that the severity of my neck and wrist injuries qualify me for retirement disability.
4 Initially, I was told that the City doctor would complete his report in time for me to go
5 before the Retirement Board on June 7, 2012. I was subsequently informed that the
6 doctor did not complete his report in time, and now I have no way of knowing when I will
7 get before the Retirement Board.

8 15. Measure B, if passed by San Jose electorate, would eviscerate the police
9 disability retirement plan. My understanding is that instead of analyzing whether I will
10 be able to perform police officer functions, the City will analyze whether I can perform
11 the essential job functions of any position within the Police Department, including jobs
12 that consist primarily of administrative tasks. If I am found to be physically able to
13 perform the essential job functions of any position within the Police Department, my
14 disability application will be denied. More troubling, if the job or jobs that I have been
15 found to be able to perform are occupied, I will be terminated from city employment
16 without any retirement benefits. The non-police jobs in the department are Alarm
17 Technician (1 positions), Crime Prevention Specialist (5 positions), Latent Fingerprint
18 Examiner (5 positions), and Police Artist (1 position). I do not recall when any of these
19 positions was vacant for any significant period of time, nor did I sign up to work any of
20 these jobs.

21 16. If the changes delineated in the prior paragraph are implemented, it will
22 have an immediate and catastrophic impact on me because it will virtually eliminate the
23 availability of any retirement pension. Essentially, the changes will all but guarantee that
24 I will be terminated and left without the means to support myself and my family as a
25 result of being injured in the line of duty. I am at a loss for how my wife and I will pay
26 our bills if Measure B passes and I am terminated from the police department.

27 17. In light the dire situation I, and others in my situation, face, if Measure B
28 passes, I am informed that many of my colleagues will look for law enforcement work at

1 departments that maintain full disability retirement coverage, rather than risk being hung
2 out to dry during such a time of need. Unfortunately, my disability is so severe that I will
3 not be able to find work at another police agency. Moreover, I believe that other officers
4 will no longer volunteer for high-risk assignments. In fact, I believe the San Jose Police
5 Department will find it difficult, if not impossible, to find enough officers, not only to fill
6 these crucial roles, but also to simply maintain an adequate force to fulfill its public-safety
7 and crime-prevention roles.

8 I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct and that this declaration is executed this 30 day of
10 May, 2012, SAN JOSE, California.

11
12 

13 _____
Devlin Creighton